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AMERICAN ARBITRATION ASSOCIATION

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DUNHILL STAFFING SYSTEMS, INC.,

Claimant

-against-

DUNHILL FRANCHISEE TRUST et al,

Respondents.

. X

200 Park Avenue

New York, New York

June 22, 2006

11:10 a.m.

DEPOSITION of HARVEY J. AUGER, taken on
behalf of the Parties, pursuant to Notice, held
before a Notary Public of the State of New York.

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1 H. AUGER
 2 Q Other than this letter, Exhibit
 3 A-5, and what you communicated to Dunhill through
 4 the FAC, did you give Dunhill, and by you
 5 meaning, you and/or your wife or the Auger Group,
 6 LLC, give Dunhill any other written notices of
 7 their alleged breaches?
 8 A Verbally only.
 9 Q In this case, Mr. Auger, you are
 10 claiming damages from Dunhill?
 11 A Yes.
 12 Q And have you calculated an amount
 13 of damages that you are going to ask the
 14 arbitrator to award in your favor?
 15 A Yes.
 16 Q And what types of categories of
 17 damages are you seeking?
 18 A Initial investment, capital
 19 investment, the move to Charlotte and loss of
 20 annual revenue or annual pay for myself,
 21 attorney's fees.
 22 Q Okay. Anything else?
 23 A I think that's it.
 24 Q Did you undertake the calculation
 25 yourself or did you have someone do that on your

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1 H. AUGER
 2 behalf other than your attorney?
 3 A I did it myself.
 4 Q And how did you calculate your
 5 losses in each of these categories?
 6 A Well, the initial investment was
 7 very easy to do.
 8 Q That would be the \$38,000.00 fee?
 9 A Correct.
 10 Q What was the amount of your capital
 11 investment?
 12 A Conservatively 200,000.
 13 Q What was included in your capital
 14 investment?
 15 A All the investments for the office;
 16 salaries, operating expenses, covering the
 17 losses.
 18 Q Are there any outstanding business
 19 liabilities that have not been satisfied?
 20 A Yes, I have a line of credit and
 21 numerous credit card bills.
 22 Q What is the balance of the line of
 23 credit?
 24 A The balance now is only about
 25 6,000.

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1 H. AUGER
 2 Q Are those or is that amount all
 3 business related?
 4 A All business, that's all.
 5 Q How about the credit card balances?
 6 A Credit card balances are fifteen on
 7 one and about four on the other.
 8 Q And how much in losses are you
 9 seeking in relation to your move to Charlotte?
 10 A Roughly 20,000.
 11 Q How about your loss of annual
 12 revenue or pay?
 13 A Continual income, the, you know,
 14 when I talked to Joanne and I said I'm used to
 15 making 250,000, she said that is not an
 16 unreasonable expectation. I never made any, I
 17 didn't make any income the whole time that I held
 18 my office so, you know, I would assume that I
 19 should make at least 200,000 a year.
 20 Q Do you recall being given a request
 21 for production of documents that were served by
 22 my office to your counsel?
 23 A Yes.
 24 Q Did you participate in assembling
 25 documents that were provided in response to that

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1 H. AUGER
 2 request?
 3 A Yes.
 4 Q Did you understand that the request
 5 asked you to provide every document in your
 6 possession that would be supportive of the
 7 various counterclaims that you are asserting?
 8 A Well, I believe so.
 9 Q Okay. Your attorney this morning
 10 produced that one additional document, the
 11 business opportunity document that had not been
 12 previously produced. Are there any other
 13 documents in your possession that have not been
 14 produced that in any way would support the
 15 different counterclaims that are being asserted
 16 to the best of your knowledge?
 17 A I am still going through files and
 18 looking for everything I can to support it so I
 19 don't know in this point of time that I will find
 20 something else.
 21 MR. WOLF: Those are all the
 22 questions that I have for you. Thank
 23 you.
 24 MR. ROSEN: I have a few
 25 questions.

28 (Pages 106 to 109)

AMERICAN ARBITRATION ASSOCIATION
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DEPOSITION OF MICHAEL LAMANNA

New York, New York

Wednesday, June 21, 2006

Reported by:
William Byrne
JOB NO. 43777

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1 M. Lamanna
2 would you describe that?
3 A. The money that I invested into
4 the business that the loss of -- let's
5 see, the money that I invested into the
6 business that I have not recovered as of
7 this time and to put a dollar figure on
8 it, it's maybe in the amount of 50 --
9 MR. ROSEN: He didn't ask you
10 to put a dollar figure.
11 Q. That was going to be my next
12 question. If you could put an estimated
13 dollar figure on the amount that you
14 invested in either start-up or operating
15 costs during the time that you were in
16 business as a Dunhill franchise owner,
17 what would that estimated amount be?
18 A. I think it was approximately
19 \$50,000 in investment, and that's to the
20 best of my recollection, there may be
21 additional.
22 Q. I will not hold you to that
23 specific estimation, it's just to get an
24 idea of what you were talking about.
25 The \$50,000 investment costs.

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1 M. Lamanna
2 the franchise fee, both the initial fee
3 and royalties and loss of income and
4 wages, would kind of cover everything?
5 A. It seems to be, yes.
6 MR. WOLF: I believe those
7 are all the questions that I have
8 for you. Thank you very much.
9 MR. ROSEN: I have a couple
10 of questions.
11 EXAMINATION BY
12 MR. ROSEN:
13 Q. Mr. Wolf asked you to if you
14 can recall to recite some of the areas of
15 damage that you suffered, and you were
16 reciting some of the areas that you had
17 spent money on. Did you spend money on
18 advertising, did you make an advertising
19 contribution to the franchisor?
20 A. Yes, I did.
21 Q. Would that be an area you
22 would also seek to be compensated?
23 A. Yes.
24 Q. Did you have to relocate --
25 you already talked about the expense of

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1 M. Lamanna
2 starting up your business?
3 A. Yes.
4 Q. Would you expect to be
5 entitled to interest on your losses in
6 your investment?
7 A. Yes.
8 Q. Do you think that the
9 franchisor because of its conduct, and
10 let's say its purported contract inducing
11 you to enter into the contract, should be
12 responsible for punitive damages?
13 A. Yes, I would think so.
14 Q. You spoke about the
15 conversation that you had, that you were
16 virtually certain was with Robert Stidham,
17 and you discussed the various information
18 that you were seeking from Mr. Stidham,
19 and you talked about information regarding
20 the costs of the franchise.
21 Was there any other
22 information that you asked Mr. Stidham to
23 give you?
24 A. Of course, in addition to
25 costs, I was looking at what the income

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1 M. Lamanna
2 possibilities could be.
3 Q. Going back to the things you
4 would be looking to recover in this case,
5 would you also be looking to recover your
6 attorneys' fees that you have incurred?
7 A. If possible, yes, of course.
8 Q. You were talking about the
9 circumstances surrounding your signing of
10 the franchise agreement, and you had
11 testified this was done when you were at a
12 training session --
13 A. Yes.
14 Q. -- presumably in Hauppauge.
15 A. Yes, it was.
16 Q. Did Dunhill or did any of
17 Dunhill's representatives indicate to you
18 that they wanted your agreement to be
19 signed before you left the training?
20 A. They wanted my agreement to be
21 signed and the initial check to be
22 delivered while I was at the training.
23 They wanted me to do it as soon as
24 possible.
25 Q. But not after you left, they

32 (Pages 122 to 125)

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AMERICAN ARBITRATION ASSOCIATION

DUNHILL STAFFING SYSTEMS, INC.

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DEPOSITION OF ELIAS ZINN

New York, New York

Tuesday, December 12, 2006

Reported by:

WILLIAM BYRNE

JOB NO. 45470

1 E. Zinn
2 was never acknowledged as I understand it
3 so at the advice of counsel starting after
4 August, I did not report revenue but it's
5 accurately reported through August of '04.
6 **Q. And through August of '04 all**
7 **of the reported royalties have been paid?**
8 A. Yes.
9 **Q. So it's your position that no**
10 **royalties would be due to Dunhill based on**
11 **the revenues that were collected by your**
12 **business?**
13 A. At what time?
14 **Q. Well, going back to when you**
15 **first became a franchisee.**
16 MR. ROSEN: Can we say
17 through August of '04, which is the
18 last day that he reported them, if
19 he answers the question through that
20 date, will that be the answer you
21 are looking for?
22 MR. WOLF: Well, yeah, without
23 waiving Dunhill's right to the claim
24 that its owed royalties past that
25 day but yeah.

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1 E. Zinn
2 A. Yes.
3 **Q. The next category is all of**
4 **the royalties paid on the permanent**
5 **agreement?**
6 A. Yes.
7 **Q. You are not seeking**
8 **reimbursement of the royalties paid on the**
9 **temp agreement?**
10 A. That's a complicated question
11 because there are no royalties paid on the
12 temp agreement, so I can't answer yes or
13 no to that because I have to visit with
14 that with counsel.
15 **Q. The next category is your**
16 **operating losses, the losses for which you**
17 **wrote checks?**
18 A. Yes.
19 **Q. How much is that?**
20 A. I don't have the exact number
21 but within 175 and 225,000 through 2000
22 and 2003, but that is an approximate
23 number.
24 **Q. What was the number?**
25 A. 175 to 225,000.

[Page 164]

1 E. Zinn
2 A. Yes, everything was reported
3 on the royalty reports.
4 MR. ROSEN: Was it paid?
5 THE WITNESS: Yes.
6 **Q. In this arbitration you're**
7 **claiming to have sustained damages; is**
8 **that correct?**
9 A. Yes.
10 **Q. What are the damages that you**
11 **are seeking from Dunhill in this case?**
12 A. The categories of damages
13 would be the franchise fee for the
14 permanent and temp; the royalties for the
15 permanent; the operating losses that we
16 had to write checks for; the capital
17 expenses that basically were written off
18 at the time we terminated the Dunhill
19 franchise; the interest of the monies -- I
20 would have invested that money
21 differently -- and, obviously, the
22 attorneys fees, to get back that money.
23 **Q. The first category is the**
24 **initial franchise fee paid for both the**
25 **permanent and temp franchise agreement?**

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1 E. Zinn
2 **Q. And that is from what period**
3 **to what period?**
4 A. From 2000 to 2003.
5 **Q. Then the next category was**
6 **capital expenditures?**
7 A. Any additional capital
8 expenditures that I had when we bought the
9 franchise, and we capitalized some issues
10 that related to the purchase of the
11 Dunhill franchises. We subsequently
12 didn't write that off until after 2003.
13 **Q. What is the writeoff figure?**
14 A. I haven't really analyzed
15 that. I have to get together with our
16 accountants to see what the exact number
17 is.
18 **Q. Have you undertaken any**
19 **analysis of the interest that you are**
20 **claiming on the monies that you would have**
21 **invested differently?**
22 A. I have not.
23 **Q. How much in attorneys' fees**
24 **are you seeking?**
25 A. I forgot one area there, I'm

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[42] (Pages 162 to 165)

<p>1 E. Zinn 2 sorry, that made me think. I had lost 3 earnings obviously related to not being in 4 my real estate business because I 5 terminated my managing partnership in my 6 real estate business to take on the 7 Dunhill franchise. 8 Q. How much were you earning as a 9 managing partner of your real estate 10 business? 11 A. Approximately 80 some-odd 12 thousand a year to be the managing 13 partner. 14 Q. Have you undertaken some 15 calculation of what the value of your lost 16 earnings claim is? 17 A. Well, I would say that each 18 year that I operated at Dunhill and had to 19 write a check to operate it, I was losing 20 the earnings I would have done if I 21 remained the managing partner of the real 22 estate company to 2000 through 2003. I 23 would have earned at least what I earned 24 in '99, which was in the mid-80,000 range. 25 Q. So the calculation of your [Page 166]</p>	<p>1 E. Zinn 2 to 35 percent of our revenue in the 3 Dunhill exchange program. 4 Q. Who told you that? 5 A. Joanne, and Rick Keane. 6 Q. Now, you also testified that 7 you were shown information with respect to 8 what certain franchisees were generating 9 in revenue at that meeting. What were you 10 shown? 11 A. I was shown the monthly data 12 statistics MDS, I think for either October 13 or November of '99 -- September or October 14 of '99. 15 Q. And who showed you that? 16 A. Joanne. 17 Q. And how did it come up, how 18 did she happen to show that to you? 19 A. Basically, when we went to a 20 private meeting with her I said I was 21 really concerned that how could I or how 22 could this be. 23 I think I said the question is 24 why should I buy a Dunhill franchise over 25 MRI, which they seem to be very successful [Page 168]</p>
<p>1 E. Zinn 2 lost earnings claim would be based on 3 \$80,000 a year times four years? 4 A. Mid-80s, yes. 5 MR. WOLF: I have nothing 6 further. Thank you very much. 7 MR. ROSEN: Are you finished 8 with your answer on that? 9 THE WITNESS: Yes. 10 MR. ROSEN: I have a couple 11 of questions. 12 EXAMINATION BY 13 MR. ROSEN: 14 Q. Let's go back to November 1999 15 at your meeting, and I would like to 16 clarify a couple of things you said. 17 A. Yes. 18 Q. You testified earlier about 19 the exchange program, what exactly were 20 you told with respect to the exchange 21 program? 22 A. In the meetings in November of 23 '99? 24 Q. Yes. 25 A. I was told that we will do 25 [Page 167]</p>	<p>1 E. Zinn 2 also, and what kind of money could I make 3 on a Dunhill franchise. 4 Q. What did she do at that point? 5 A. She showed the MDS report from 6 September October '99 and she proceeded to 7 say that the Martineus and Winston-Salem 8 are the leading franchisee, they are 9 making over a million and the guys on 10 Cherry Hill are approaching a million this 11 year and you can do it too. 12 Q. Did anybody else that was on 13 the permanent side? 14 A. That was on the permanent 15 side? 16 Q. Did anybody show you any 17 information or discuss any earnings that 18 franchisees were making on the temporary 19 side? 20 A. Tom Esposito in his meeting 21 said that the guys like Phil Mercillen and 22 Jacob Joseph in Irvine, Texas are making 23 millions and you can do that too. 24 Q. I want to go to your prior 25 testimony regarding the notice issue, and [Page 169]</p>

[43] (Pages 166 to 169)